

AMENDED IN SENATE MAY 18, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 526

Introduced by ~~Senator~~ *Senators Fuller and Runner*

February 26, 2015

An act to amend Section 18533 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 526, as amended, Fuller. Personal income taxes: joint returns: relief from liability.

Existing law generally provides that whenever a joint income tax return is filed by spouses or registered domestic partners the liability for the tax is joint and several, and that the spouse or partner who controls the disposition of or who receives or spends community income as well as the spouse who is taxable on the income is liable for the payment of the taxes imposed by the Personal Income Tax Law on that income. Existing law allows, under specified conditions, a court in a proceeding for dissolution of marriage or the Franchise Tax Board to revise the income tax liabilities of spouses or registered domestic partners, but prohibits revisions to relieve a spouse of tax liability on income earned by or subject to the exclusive management and control of the spouse.

Existing income tax law allows, under procedures prescribed by the Franchise Tax Board, an individual who has made a joint return to elect to seek relief from liability for an understatement of tax or to limit the individual's liability of any tax deficiency. Existing income tax laws require an individual making those elections to be relieved of liability from tax if specified conditions are met, and requires that the

individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual as specified by law if, among other things, the individual meets the burden of proof as specified. Under existing income tax law, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency, and relief is not available to the individual under these procedures, the Franchise Tax Board is authorized to relieve the individual of that liability, as provided.

This bill would allow, for requests for relief received on and after January 1, 2016, when taking into account all the facts and circumstances, the fact that the individual's liability for any unpaid tax or deficiency *for any taxable year where a joint return has been filed* has been revised under a judgment of dissolution of marriage to be a factor weighing in favor of relief from tax liability on income earned by or subject to the exclusive management and control of the individual, whether or not the individual was a victim of abuse at the time the return was filed or whether or not funds that would have been used to pay the tax or deficiency were misappropriated by the nonrequesting spouse.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18533 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 18533. (a) (1) Notwithstanding subdivision (a) and the first
- 4 sentence of subdivision (b) of Section 19006:
- 5 (A) An individual who has made a joint return may elect to seek
- 6 relief under the procedures prescribed under subdivision (b), and
- 7 (B) If the individual is eligible to elect the application of
- 8 subdivision (c), the individual may, in addition to any election
- 9 under subparagraph (A), elect to limit the individual's liability for
- 10 any deficiency with respect to the joint return in the manner
- 11 prescribed under subdivision (c).
- 12 (2) Any determination under this section shall be made without
- 13 regard to community property laws.
- 14 (b) (1) Under procedures prescribed by the Franchise Tax
- 15 Board, if—

1 (A) A joint return has been made under this chapter for a
2 taxable year,

3 (B) On that return there is an understatement of tax attributable
4 to erroneous items of one individual filing the joint return,

5 (C) The other individual filing the joint return establishes that
6 in signing the return he or she did not know of, and had no reason
7 to know of, that understatement,

8 (D) Taking into account all facts and circumstances, it is
9 inequitable to hold the other individual liable for the deficiency
10 in tax for that taxable year attributable to that understatement,
11 and

12 (E) The other individual elects (in the form and manner as the
13 Franchise Tax Board may prescribe) the benefits of this
14 subdivision not later than the date that is two years after the date
15 the Franchise Tax Board has begun collection activities with
16 respect to the individual making the election,
17 then the other individual shall be relieved of liability for tax
18 (including interest, penalties, and other amounts) for that taxable
19 year to the extent that the liability is attributable to that
20 understatement.

21 (2) If an individual who, but for subparagraph (C) of paragraph
22 (1), would be relieved of liability under paragraph (1), establishes
23 that in signing the return the individual did not know, and had no
24 reason to know, the extent of the understatement, then the
25 individual shall be relieved of liability for tax (including interest,
26 penalties, and other amounts) for that taxable year to the extent
27 that the liability is attributable to the portion of the understatement
28 of which that individual did not know and had no reason to know.

29 (3) For purposes of this subdivision, the term “understatement”
30 has the meaning given to that term by Section 6662(d)(2)(A) of
31 the Internal Revenue Code.

32 (c) (1) Except as provided in this subdivision, if an individual
33 who has made a joint return for any taxable year elects the
34 application of this subdivision, the individual’s liability for any
35 deficiency that is assessed with respect to the return may not exceed
36 the portion of the deficiency properly allocable to the individual
37 under subdivision (d).

38 (2) Except as provided in clause (ii) of subparagraph (A) of
39 paragraph (3) or subparagraph (C) of paragraph (3), each individual
40 who elects the application of this subdivision shall have the burden

1 of proof with respect to establishing the portion of any deficiency
2 allocable to that individual.

3 (3) (A) (i) An individual shall only be eligible to elect the
4 application of this subdivision if—

5 (I) At the time the election is filed, that individual is no longer
6 married to, or is legally separated from, the individual with whom
7 that individual filed the joint return to which the election relates,
8 or

9 (II) That individual was not a member of the same household
10 as the individual with whom the joint return was filed at any time
11 during the 12-month period ending on the date the election is filed.

12 (ii) If the Franchise Tax Board demonstrates that assets were
13 transferred between individuals filing a joint return as part of a
14 fraudulent scheme by those individuals, an election under this
15 subdivision by either individual shall be invalid (and subdivision
16 (a) and the first sentence of subdivision (b) of Section 19006 shall
17 apply to the joint return).

18 (B) An election under this subdivision for any taxable year shall
19 be made not later than two years after the date on which the
20 Franchise Tax Board has begun collection activities with respect
21 to the individual making the election.

22 (C) If the Franchise Tax Board demonstrates that an individual
23 making an election under this subdivision had actual knowledge,
24 at the time the individual signed the return, of any item giving rise
25 to a deficiency (or portion thereof) that is not allocable to the
26 individual under subdivision (d), that election does not apply to
27 that deficiency (or portion). This subparagraph does not apply
28 where the individual with actual knowledge establishes that the
29 individual signed the return under duress.

30 (4) (A) Notwithstanding any other provision of this subdivision,
31 the portion of the deficiency for which the individual electing the
32 application of this subdivision is liable (without regard to this
33 paragraph) shall be increased by the value of any disqualified asset
34 transferred to the individual.

35 (B) For purposes of this paragraph—

36 (i) The term “disqualified asset” means any property or right to
37 property transferred to an individual making the election under
38 this subdivision with respect to a joint return by the other individual
39 filing the joint return if the principal purpose of the transfer was
40 the avoidance of tax or payment of tax.

1 (ii) (I) For purposes of clause (i), except as provided in
2 subclause (II), any transfer that is made after the date that is one
3 year before the date on which the first notice of proposed
4 assessment under Article 3 (commencing with Section 19031) of
5 Chapter 4 is sent shall be presumed to have as its principal purpose
6 the avoidance of tax or payment of tax.

7 (II) Subclause (I) does not apply to any transfer pursuant to a
8 decree of divorce or separate maintenance or a written instrument
9 incident to that decree or to any transfer that an individual
10 establishes did not have as its principal purpose the avoidance of
11 tax or payment of tax.

12 (d) For purposes of subdivision (c)—

13 (1) The portion of any deficiency on a joint return allocated to
14 an individual shall be the amount that bears the same ratio to the
15 deficiency as the net amount of items taken into account in
16 computing the deficiency and allocable to the individual under
17 paragraph (3) bears to the net amount of all items taken into
18 account in computing the deficiency.

19 (2) If a deficiency (or portion thereof) is attributable to—

20 (A) The disallowance of a credit, or

21 (B) Any tax (other than tax imposed by Section 17041 or 17062)
22 required to be included with the joint return, and the item is
23 allocated to one individual under paragraph (3), that deficiency
24 (or portion) shall be allocated to that individual. Any item so
25 allocated may not be taken into account under paragraph (1).

26 (3) For purposes of this subdivision—

27 (A) Except as provided in paragraphs (4) and (5), any item
28 giving rise to a deficiency on a joint return shall be allocated to
29 individuals filing the return in the same manner as it would have
30 been allocated if the individuals had filed separate returns for the
31 taxable year.

32 (B) Under rules prescribed by the Franchise Tax Board, an item
33 otherwise allocable to an individual under subparagraph (A) shall
34 be allocated to the other individual filing the joint return to the
35 extent the item gave rise to a tax benefit on the joint return to the
36 other individual.

37 (C) The Franchise Tax Board may provide for an allocation of
38 any item in a manner not prescribed by subparagraph (A) if the
39 Franchise Tax Board establishes that the allocation is appropriate
40 due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply, or who requests equitable relief under subdivision (f)—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) or requesting equitable relief under subdivision (f) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) or requesting equitable relief under subdivision (f) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision (b) or (c) or requesting equitable relief under subdivision (f) may appeal to the board at any time after the date that is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or

(c) or requesting equitable relief under subdivision (f), for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Section 19306 and Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c) or request for equitable relief under subdivision (f), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief that was not an issue in that proceeding. The exception contained in the preceding sentence does not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(C) No credit or refund shall be allowed as a result of an election under subdivision (c).

(f) (1) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(2) Notwithstanding ~~any other law~~, *subdivision (b) of Section 19006*, when taking into account all the facts and circumstances in paragraph (1), the fact that the individual's liability for any unpaid tax or deficiency *for any taxable year where a joint return has been filed* has been revised under a judgment of dissolution of marriage may be a factor weighing in favor of relief from tax liability on income earned by or subject to the exclusive

1 management and control of the individual, whether or not the
2 individual was a victim of abuse at the time the return was filed
3 or whether or not funds that would have been used to pay the tax
4 or deficiency were misappropriated by the nonrequesting spouse.

5 (g) (1) The Franchise Tax Board may prescribe regulations
6 providing methods for allocation of items other than the methods
7 under paragraph (3) of subdivision (d).

8 (2) It is the intent of the Legislature that, in construing this
9 section and any other sections that are specifically cross-referenced
10 in this section, any regulations that may be promulgated by the
11 Secretary of the Treasury under Section 6015 of the Internal
12 Revenue Code shall apply to the extent that those regulations do
13 not conflict with this section or with any regulations that may be
14 promulgated by the Franchise Tax Board.

15 (h) The amendments made by Section 5 of Chapter 931 of the
16 Statutes of 1999 shall apply to any liability for tax arising after
17 October 10, 1999, and any liability for tax arising on or before that
18 date but remaining unpaid as of that date.

19 (i) (1) An individual who has made a joint return and has been
20 granted relief under Section 6015 of the Internal Revenue Code,
21 relating to joint and several liability with respect to a federal joint
22 income tax return, shall be eligible for relief under this section if
23 all of the following conditions are satisfied:

24 (A) The individual requests relief under this section.

25 (B) The facts and circumstances that apply to the understatement
26 and liabilities for which the relief is requested are the same facts
27 and circumstances that applied to the understatement and liabilities
28 for which that individual was granted relief under Section 6015
29 of the Internal Revenue Code.

30 (C) The individual requesting relief under this subdivision
31 furnishes the Franchise Tax Board with a copy of the federal
32 determination granting that individual relief under Section 6015
33 of the Internal Revenue Code. If the federal determination does
34 not clearly identify the issues and liabilities for which the individual
35 was granted relief under Section 6015 of the Internal Revenue
36 Code, the Franchise Tax Board may request, from the individual
37 requesting relief, any supporting documentation reasonably
38 necessary to substantiate that the issues and liabilities for which
39 relief is requested under this section are the same as the issues and

1 liabilities for which the individual received relief under Section
2 6015 of the Internal Revenue Code.

3 (2) This subdivision does not apply if, prior to the expiration of
4 the 30-day period described in clause (i) of subparagraph (A) of
5 paragraph (1) of subdivision (e), the other individual that filed the
6 joint return for which the relief is requested under this subdivision
7 submits information to the Franchise Tax Board that indicates that
8 relief should not be granted. For purposes of this paragraph,
9 “information that indicates that relief should not be granted” is
10 limited to the following:

11 (A) Information that indicates that the facts and circumstances
12 that apply to the understatement and liabilities for which the relief
13 is requested are not the same facts and circumstances that applied
14 to the understatement and liabilities for which that individual was
15 granted relief under Section 6015 of the Internal Revenue Code.

16 (B) Information that indicates that there has not been a federal
17 determination granting relief under Section 6015 of the Internal
18 Revenue Code or that the federal determination granting relief
19 under Section 6015 of the Internal Revenue Code has been
20 modified, altered, withdrawn, canceled, or rescinded.

21 (C) Information indicating that the other individual, as described
22 in the first sentence of this paragraph, did not have the opportunity
23 to participate, within the meaning of Section 6015 of the Internal
24 Revenue Code and the regulations thereunder, in the federal
25 administrative or judicial proceeding that resulted in relief under
26 Section 6015 of the Internal Revenue Code.

27 (j) If, prior to the date the Franchise Tax Board issues its
28 determination with respect to a request for relief under this section,
29 the individual requesting relief demonstrates to the Franchise Tax
30 Board that a request for relief has been filed with the Internal
31 Revenue Service pursuant to Section 6015 of the Internal Revenue
32 Code and demonstrates that the request for relief involves the same
33 facts and circumstances as the request for relief that is pending
34 before the Franchise Tax Board, the Franchise Tax Board may not
35 deny relief with respect to that request, in whole or in part, until
36 federal action on the request for relief under Section 6015 of the
37 Internal Revenue Code is final.

38 (k) An individual may not be granted relief under this section
39 if a court has revised the tax liability in a proceeding for dissolution

1 of the marriage in accordance with subdivision (b) of Section
2 19006.

3 (l) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code shall not apply to
5 any procedure or rule prescribed by the Franchise Tax Board
6 pursuant to this section.

7 (m) (1) This section shall become operative on January 1, 2009.

8 (2) The provisions of ~~subdivision~~ *subdivisions* (i) and (j), as
9 amended by the act adding this paragraph, shall apply on and after
10 January 1, 2009.

11 (3) The amendments made to subdivisions (e), (g), and (h) by
12 Chapter 318 of the Statutes of 2010 shall apply to requests for
13 relief received on or after January 1, 2010.

14 (4) The amendments made by the act adding this paragraph
15 shall apply to requests for relief received on or after January 1,
16 2016.